IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1981 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PADMABEN KAMLESHBHAI LAKHANI

Versus

KAMLESH DEVANDAS LAKHANI

Appearance:

1. Misc.Civil Application No. 1981 of 2003

MR SP HASURKAR for Petitioner No. 1

UNSERVED-REFUSED (R) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 25/10/2004

ORAL JUDGEMENT

1. Padmaben Kamleshbhai Lakhani, petitioner original opponent has filed this application with a prayer that this Court may transfer the proceedings pending before

the Family Court, Ahmedabad, being Hindu Marriage Petition No.80 of 2003 to an appropriate court of jurisdiction at Dahod.

2. It may be noted that, Mr.Hasurkar, learned advocate for the petitioner has stated that, the petitioner has served the rule but the respondent has refused to accept the rule and, therefore, I am taking up and deciding the matter in the absence of husband who has refused to accept the rule.

3. The facts giving rise to this application are as under:-

3.1 The marriage between petitioner and respondent was solemnised at Dahod as per Hindu rites. Out of said wedlock, there is a child (daughter) aged 3 years named Reshma who was born on 23.1.2001. As difference and dispute arose, the applicant filed application for maintenance under Sec.125 of the Code of Criminal Procedure being Maintenance Application No.47 of 2002 before the learned J.M.F.C., Dahod.

3.2 From the record it appears that the court has passed order of Rs.500/- in favour of applicant and Rs.400/- in favour of child. Against that revision application was filed and same is pending before the Sessions Court at Dahod.

3.3 To-day, Mr.Hasurkar, learned advocate for the petitioner on instructions states that Rs.37,000/- are due and payable by opponent to applicant. It is further stated that the applicant had also filed application under Sec.498-A of the Indian Penal Code before the Metropolitan Magistrate Court at Ahmedabad. The said application is also pending in this behalf.

3.4 It may be noted that the respondent has filed application before the Family Court in the month of January 2003 under Sec.9 of the Hindu Marriage Act, for restitution of conjugal rights. The petitioner has given detail of the said proceedings in para 3.1 to 3.11.

3.5 It may be noted that Mr.Hasurkar has relied upon the judgment of Hon'ble Supreme Court in the case of Sumita Singh Vs. Kumar Sanjay and another reported in AIR 2002 SC 396, and judgment of this Court in the case of Riya @ Lata W/o. Mahesh Israni Vs. Mahesh s/o. Sugnomal Israni reported in (2003) 2 GHJ 574 and also judgment of this Court in MCA No.1160 of 2002 in the case of decided on 23rd July, 2003. This Court further held

that in transferring the matter the court must see the convenience of wife. In this case also, after seeing the convenience of wife, in my view, the proceedings pending before the Family Court at Ahmedabad may be transferred to the Court at Dahod District.

4. In view of the same, the proceedings pending before the Family Court, Ahmedabad, being Hindu Marriage Petition No.80 of 2003 is ordered to be transferred to District Court at Dahod. The learned District Judge, Dahod, is requested to dispose of the said petition in accordance with law, as expeditiously as possible. Registry is directed to send the copy of this order to the Family Court, Ahmedabad, for transferring the matter to the District Court, Dahod, as indicated above.

5. In view of the aforesaid observations and directions, this application is disposed of. Rule is made absolute with no order as to costs.

(K.M. Mehta, J.)

syed/